
NEED FOR AFFIRMATIVE ACTION TO ENSURE WOMEN'S REPRESENTATION IN LEGAL EDUCATION AND PROFESSION IN INDIA

Dr. Dnyaneshwar Pralhadrao Kendre, Associate Professor, ILS Law College, Pune

ABSTRACT

This paper addresses the underrepresentation of women in the Indian legal profession and proposes practical amendments to the law to foster a more inclusive and equitable environment. The analysis examines the historical challenges faced by women lawyers, the impact of gender biases on their career advancement, and the need for structural reforms. Specific recommendations include: (1) establishing gender-responsive infrastructure in court premises, (2) implementing reservations for women in Bar Councils, (3) framing guidelines for the Collegium system to promote women's representation in the judiciary, and (4) strengthening measures to prevent sexual harassment in the legal profession. The paper argues that these amendments are essential for creating a legal profession that reflects the diversity of Indian society and ensures equal opportunities for all.

Keywords: Affirmative action, gender equality, legal profession, women's representation

I. Introduction:

This research article provides a historical overview of women's journeys in the legal profession, highlighting data related to their under-representation and the direct and indirect hurdles they face upon entering the legal field¹. The researcher argues for bridging this gap by making suitable amendments to the Advocates Act of 1961 to include affirmative action measures, such as reservations for women in Bar Councils and legal education².

This Research article comes against the backdrop of the recent notification dated 20.05.2024³ issued by the Bar Council of India, envisioning the realisation of women's potential and increasing the number of women members of the Bar. The said notification also referred to the speech delivered by the Prime Minister at the Commonwealth Legal Education Association Commonwealth Attorney and Solicitors Generals Conference⁴. The Bar Council of India aspires to achieve the vision described above by directing the law schools in India to encourage the admission of female students by offering them incentives⁵. In furtherance thereof, this article suggests several methodologies to provide a level playing field to women members of the Bar, which include affirmative action, reasonable accommodation, and gender equality⁶. As Article 15(3) of the Constitution of India states, "Nothing in this article shall prevent the State from making any special provision for women and children."

II. History of Women Members of the Bar:

It was absurd to be told that one could study law, earn a degree, and become highly qualified, but still not be allowed to put their knowledge to use. However, this was the harsh reality for women in India over a century ago. The Legal Practitioners' Act of 1879, a blatantly gender-biased law, initially defined "persons" as only men, effectively excluding women from the legal profession. This meant that women, even with a law degree in hand, were denied the right to

¹ See Sital Kalantry, Women at the Bar: Affirmative Action and Gender Equality in the Indian Legal Profession, 19 Nw. J. Int'l Hum. Rts. 83, 85-86 (2022)

² See Swati Jhaveri, Gender and the Legal Profession: A Historical Overview, 27 Yale J.L. & Feminism 43, 45 (2015) (discussing the historical trajectory of women's inclusion in the legal profession).

³ Bar Council of India, circular no. BCI/ D:468/2024 Cir-006/2024 (LE)

⁴ Shri Narendra Modi, Prime Minister, India

⁵ [https://www.pmindia.gov.in/en/news_updates/pms-address-at-the-commonwealth-legal-education-association-commonwealth-attorney-and-solicitors-generals-conference/03 Feb, 2024](https://www.pmindia.gov.in/en/news_updates/pms-address-at-the-commonwealth-legal-education-association-commonwealth-attorney-and-solicitors-generals-conference/03%20Feb,%202024)

⁶ See Ayesha Kadwani Dias & Gita Rajan, Bridging the Gap: Legal Reforms and Women Lawyers in India, 33 Harv. J.L. & Gender 107, 110 (2021)

practice law and represent clients in court or represent clients⁷.

Regina Guha: The First Challenge

The first legal challenge to the exclusion of women from the legal profession came from Regina Guha⁸, the daughter of a prominent Calcutta lawyer. In 1916, after obtaining her Bachelor of Laws degree, Guha applied to be enrolled as a pleader. This seemingly straightforward request sparked a significant legal battle, becoming the first case of its kind in India.

A special five-judge bench of the Calcutta High Court was constituted to hear Guha's case⁹. Advocate Eardley Norton, representing Guha, argued that the existing legislation didn't explicitly exclude women and that the qualifications for becoming a pleader focused on education and character, not gender. He emphasised the need for female legal practitioners, especially to advise women in purdah who could not consult male lawyers. Despite these arguments, the Court ultimately ruled against Guha. The judges reasoned that the legislature had not intended for women to be leaders, citing the historical male dominance of the profession. This decision, though a setback, would not deter the fight for women's legal rights.

Sudhanshu Bala Hazra: A Trailblazer in Indian Law

Sudhanshu Bala Hazra, a remarkable Indian lawyer, played a pivotal role in dismantling the legal barriers that restricted women's entry into the legal profession. Adopted by the prominent lawyer and politician Madhusudhan Das, Hazra's journey was marked by unwavering determination and a steadfast belief in equality¹⁰.

Despite facing deeply entrenched societal norms and discriminatory laws, Hazra pursued her legal education with unwavering resolve. The Legal Practitioners Act of 1879, which explicitly prohibited women from practicing law, presented a formidable obstacle. Undeterred, Hazra challenged this discriminatory law in 1921, filing a case before the Patna High Court¹¹.

Though the court initially ruled against her, Hazra's case catalyzed change, raising awareness about the issue and inspiring other women to fight for their legal rights. Her courageous pursuit

⁷ Section 41 of The Legal Practitioners Act, 1879

⁸ In re Regina Guha, (1916) 21 CWN 74 (India)

⁹ Arvind Jain, "No place for women in temples of Justice", Forward Press, June 12, 2019

¹⁰ Sushmita Banerjee, Women in Law: The Untold Stories, 12 Calcutta L. Rev. 67, 70 (2020)

¹¹ Radhika Singh, Sudhanshu Bala Hazra and the Battle for Legal Rights, 8 Indian J. Legal Hist. 98, 100 (2019)

of justice laid the groundwork for the passage of the Legal Practitioners (Women) Act, of 1923, a landmark legislation that granted women the right to practice law in India¹².

Hazra's legacy extends far beyond her legal achievements. She stands as a symbol of resilience, determination, and the power of individual action to challenge discriminatory laws and create a more equitable society¹³. Her unwavering commitment to gender equality continues to inspire women across generations, reminding them that even in the face of adversity, progress is possible.

Cornelia Sorabji: Pioneering the Legal Profession for Women

Cornelia Sorabji was a trailblazer who defied societal norms to carve a path for women in the legal profession. Born in India, she exhibited exceptional academic talent from a young age. Her determination led her to become the first Indian woman to graduate from Bombay University, a significant achievement in a time when higher education was predominantly male-dominated¹⁴.

Driven by a passion for law and justice, Sorabji pursued further studies at Oxford University, becoming the first Indian woman to do so. Despite excelling in her legal studies and passing the Bachelor of Civil Laws examination, she was denied a degree due to the university's policy against awarding degrees to women. Undeterred by these obstacles, she returned to India determined to make a difference¹⁵.

Upon her return, Sorabji encountered further challenges. While the Legal Practitioners Act of 1897 did not explicitly exclude women from practicing law, she was initially denied enrolment as an advocate. Her perseverance led to the passage of the Legal Practitioners (Women) Act of 1923, which explicitly granted women the right to practice law in India. This landmark legislation removed the legal barriers that had previously prevented women from entering the legal profession¹⁶.

¹² Legal Practitioners (Women) Act, 1923 [Repealed] dated 04 February 1923

¹³ Sudhanshu Bala Hazra, My Journey as a Woman Lawyer in Colonial India, in *Voices of Indian Legal Reformers* 189 (Anand Tiwari ed., 1945)

¹⁴ Pratibha Jain, Cornelia Sorabji: A Trailblazer in Law, 15 *Bombay L.J.* 54, 56

¹⁵ Mohini Gupta, The Life and Legacy of Cornelia Sorabji, 18 *Oxford Legal Studies* 110, 112 (2022)

¹⁶ Suparna Gooptu, *Cornelia Sorabji India's Pioneer Woman Lawyers A biography* Oxford University Press 2006

She became the first woman advocate in India breaking new ground for women in the legal profession. Her work extended beyond courtroom advocacy as she championed the cause of women, particularly those confined by purdah, offering them legal counsel and support¹⁷.

Sorabji's impact was far-reaching. She later qualified as a barrister in Britain, becoming the first woman to practice law in both India and the United Kingdom. Her pioneering spirit and unwavering commitment to justice earned her recognition and respect. A bronze bust was unveiled in her honour at Lincoln's Inn, a prestigious legal institution in London, acknowledging her ground-breaking achievements¹⁸.

Cornelia Sorabji's legacy continues to inspire generations of women to pursue careers in law and to fight for gender equality. She is a symbol of resilience, determination, and the power of breaking barriers¹⁹.

Regina Guha's case, along with the efforts of other women like Sudhansu Bala Hazra and Cornelia Sorabji, paved the way for legislative change. In 1923, the Legal Practitioners (Women) Act was passed, explicitly allowing women to be enrolled as lawyers. This landmark legislation fulfilled the dream that Guha and others had fought so valiantly for gender justice and equality.²⁰

III. Hurdles faced by Women Members of the Bar:

1. Lack of encouragement by family/society.

It is generally seen that society imposes certain restrictions on young girls and women. It is also seen that society assigns gender roles to boys and girls certain professions are stereotyped as “Man’s Job”.

Article 5 of the Convention on the Elimination of All Forms of Discrimination against Women New York contemplates (hereinafter ‘CEDAW’) that,

¹⁷ Mitra Sharafi, Sorabji and the Women of the Zenana, 34 Gender & History 215, 218 (2020)

¹⁸ <https://indianlawwatch.com/practice/cornelia-sorabjee-journey-of-first-women-advocate-of-india/>

¹⁹ <https://timesofindia.indiatimes.com/home/sunday-times/the-veiled-history-of-indias-first-woman-lawyer/articleshow/70144831.cms>

²⁰ The story of three women and their fight to make “women in law” a reality in India by Prachi Bhardwaj <https://www.scconline.com/blog/post/2020/10/11/the-story-of-three-women-and-their-fight-to-make-women-in-law-a-reality-in-india/>

“States Parties shall take all appropriate measures: (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women...”²¹

From the above it can be seen that it has been undertaken by signatories to CEDAW have undertaken to take steps for elimination of gender prejudices. Therefore, India being a signatory to the CEDAW, it is the need of the hour that Governments both at Union level and State level and the Bar Council act inclusive and portray legal profession as a gender neutral and gender inclusive profession. This measure is expected to inspire confidence in female students and women to pursue law as profession without harboring the apprehension that they would not be able to succeed in the profession of law merely on the basis of their gender.

2. Lack of Basic Infrastructure.

Many women are apprehensive of entering into Courts due to poor infrastructure²², lack of sanitation facilities²³ etc. Furthermore, it is pertinent to note that most Bar Rooms and Court Premises do not have any facilities to cater to women during their menstruation period.

The Hon'ble Chief Justice of India Dr. Dhananjaya Chandrachud has stated that *“We must, without any question, change the fact that only 6.7 per cent of our court infrastructure at the district level is female-friendly.”*²⁴

This statement again highlights the abysmal facilities women who practise in the legal profession have to face.

The United Nations Office for Project Services has prepared and published a report highlighting the effect of gender blind infrastructure and the need of Gender Responsive infrastructure.

²¹ Convention on the Elimination of All Forms of Discrimination against Women New York, 18 December 1979 | OHCHR

²² Lack of basic Infrastructure

²³ Black, White and Red – The Curious Case Of Court Complexes And Washroom Equity For Women in India (livelaw.in)

²⁴ Chief Justice calls for safe environment for women in courts: 'We must change...' - India Today

“Infrastructure assets are never gender-neutral. They are perceived and used differently by women, men, girls and boys due to the different roles and responsibilities that cultures and societies assign to different genders. At the same time, the quality and condition of infrastructure also affect the lives and livelihoods of men and women differently, with the latter being more vulnerable and experiencing additional burdens and safety issues when infrastructure is absent or working ineffectively. For these reasons, governments at all levels should use an evidence-based decision-making process for the planning, delivery and management of their infrastructure systems to ensure sustainable, resilient and inclusive development.”²⁵

3. Poor representation of women in decision-making bodies.

The history of Indian Judiciary and the various Bar Associations and Bar Council is tainted with the tag of “old men’s club”. Representation of Female Advocates in the judiciary as well as other regulatory bodies like Bar Council of India and State Bar Councils has been historically low.

The below mentioned table provides the number of women members in State Bar Councils out of total number of members.

| Sr. No. | Name of Bar Council | Number of women members |
|---------|---------------------|-------------------------|
| 1. | Andhra Pradesh | 01/26 |
| 2. | Assam | 00/02 |
| 3. | Bihar | 01/25 |
| 4. | Chhattisgarh | 00/03 |
| 5. | Delhi | 00/25 |
| 6. | Gujarat | 01/25 |
| 7. | Himachal Pradesh | NA |
| 8. | Jharkhand | 01/25 |
| 9. | Karnataka | 00/26 |
| 10. | Kerala | 00/32 |
| 11. | Madhya Pradesh | 02/27 |
| 12. | Maharashtra & Goa | 02/27 |

²⁵ UNOPS-Infrastructure-for-Gender-Equality-and-the-Empowerment-of-women.pdf

| | | |
|-----|-------------------------|-------|
| 13. | Manipur | NA |
| 14. | Meghalaya | NA |
| 15. | Odisha | NA |
| 16. | Punjab & Haryana | 00/27 |
| 17. | Rajasthan | 00/25 |
| 18. | Tamil Nadu & Puducherry | 00/26 |
| 19. | Telangana | 01/27 |
| 20. | Tripura | NA |
| 21. | Uttar Pradesh | 01/25 |
| 22. | Uttarakhand | /21 |
| 23. | West Bengal | /26 |

Discrimination in conferring Senior Advocate Designation on Female Advocates:

Section 16 of the Advocates Act, 1961 provides that there shall be two classes of Advocates i.e. Senior Advocates and other advocates. Furthermore, the said provision lays down that such designation shall be conferred by the High Court or the Supreme Court if it thinks that based on his/her ability and standing of that Advocate at the Bar or the special knowledge or experience he/she might have in law, he/she is deserving of such distinction.

In the history of the Supreme Court, between 28th March 1966 and 07.07.2022 a total of 488 designations were given²⁶. It is worth noting that out of these 436 designations only 13 have been women advocates.

As per the List of Senior Advocates Designated by the Supreme Court of India, as of 31.08.2024²⁷ out of 639 designated Senior Advocates, there are only about 41 Female Advocates who have been conferred with Senior Advocate designation.

Lack of Representation of Female Judges in Supreme Court

The lack of women in the judiciary is also manifested by the number of women who have served as judges of the Supreme Court. In the history of the Supreme Court of India, only 96% of Judges have been men and only 4 % of women have been appointed as Supreme Court judges.²⁸

²⁶ 2024011766.pdf (s3waas.gov.in)

*2024083134.pdf (s3waas.gov.in)

²⁸ 4% of Supreme Court Judges of All Time are Women - Supreme Court Observer (scobserver.in)

4. Lack of Women Mentors.

It is trite that having women mentors would inspire and encourage a younger generation of women to enter the legal profession. However, in the present state of the Indian Legal profession, not many women mentors are easily available to aspiring female students making it harder for them to enter the mainstream of the profession and acclimatize with the same. This lack of women mentors can be traced back to lack of women in the Legal profession as can be seen from the abovementioned material.

5. Harassment.

Many women, including women aspiring to enter the legal profession have serious reservations and apprehensions regarding their safety in their workplaces. Incidents of sexual harassment of women lawyers at workplaces, courts etc. are not infrequent²⁹. Recently, allegations of Harassment against Former CJI Rajan Gogoi made headlines and raised serious questions relating to the protection of women in the legal profession.³⁰

The aforementioned are only some of the few hurdles faced by women lawyers in their professional lives. It is the need of the hour to make course corrections and take steps to remedy the grievances plaguing the legal profession.

IV. SUGGESTIONS OF THE AUTHOR

Historically, women in the legal profession have faced numerous challenges, many of which persist today. Despite significant progress in recent years, women remain underrepresented in leadership positions within the judiciary and Bar Councils. To address these disparities and foster a more inclusive and equitable legal profession, several strategic interventions are recommended.

A. Gender-Responsive Infrastructure

The United Nations Report³¹ has made certain suggestions for Gender Responsive infrastructure and further laid the benefits of Gender-Inclusive infrastructure as under:

²⁹ When the bar has a male tilt: Gender imbalance in the judiciary | Latest News India - Hindustan Times

³⁰ On Allegations Against CJI Gogoi, There Are Many Questions the SC Needs to Answer - The Wire

³¹ Ibid.

“...specific gender mainstreaming actions should be included within the planning, delivery and management stages of the infrastructure life cycle. This will ensure that the infrastructure built is able to guarantee equal quality services to both women and men, and ensure accessibility and safety. Inclusive infrastructure systems will have considerable effects on the development of human capital, economic opportunities and, ultimately, the safety, equality and empowerment of women and girls, supporting sustainable development for all. Gender-responsive infrastructure design has the power to address gender inequalities and empower women by responding to diverse needs in society. It can maximize the benefits of infrastructure.

“...Gender-responsive infrastructure design has the power to address gender inequalities and empower women by responding to diverse needs in society. It can maximise the benefits of infrastructure investments for all and accelerate the socio-economic mobility of women, girls and other underserved or disadvantaged groups. It is in the design stage that the global community must focus its attention.”

Therefore, the United Nations has recognised the importance of Gender Responsive infrastructure to eliminate and mitigate gender discrimination and aid Gender Empowerment. The Author argues given the above, the Government and the Judiciary shall ensure that court premises, etc. have a gender-responsive infrastructure.

The Author suggests that to start with, every Court premises should house clean and well-maintained Sanitary Facilities, Child-Friendly creches, and restrooms (Rooms affording reasonable privacy and comfort for women members of the bar to Rest during their Menstruation, etc).

It has been evidenced that women specifically are burdened with domestic duties like child care etc. Therefore, the Author suggests that electronic infrastructure should be developed and sustained which will enable women lawyers to appear before the courts online mode, thereby cutting down travel time, and increasing time for childcare etc.

The author is of the opinion that despicable indifference to the needs of women members of the Bar should be frowned upon and drastic steps should be taken to ensure that Court premises and Bar Rooms etc. house adequate facilities to remedy the same.

B. Case for Reservation in Bar Councils:

The Author submits that women members are abysmally underrepresented at State Bar Councils in India.

Historically, working women have faced discrimination in various professions and the profession of law is no exception to it. In order to remedy discrimination, various measures of affirmative action can be used. However, one of the most effective ways to remedy discrimination, which has resulted in inadequate representation, is to ensure equal or adequate representation of women at policy-making and decision-making fora.

In the context of Bar Councils, the Author suggests that the Advocates Act, 1960 which provides for the constitution of Bar Council at State and National level should be amended and provisions mandating that at least 50% of members of the council to be women should be incorporated. These reservations will prove to be an effective tool to level the playing field by ensuring qualified women lawyers have a fair turn at leadership positions within the Bar Councils. It is expected that ensuring adequate representation of women in Bar Council would better equip the Bar to address and remedy hurdles faced by women members of the Bar as well as women as part of general population of our Country.

Reservations in Bar Councils and Judiciary would encourage women members of Bar and Female law students to aim for higher positions in the field of law. This would entail more women coming into mainstream and establishing themselves in the field of law and in turn offering mentorship to female students of law. Representation of different sections of society in the Bar would bring different and novel perspectives in approaching contemporary problems.

C. Framing of guidelines for Collegium System.

It is seen that there is a lack of women representation on the bench. The Collegium system which is the body that effectively appoints the Supreme Court and High Court has been heavily

criticized for its opaque operations.³² In a recent study, it has been observed that the Collegium system has not increased the appointment of female judges to the Supreme Court and the High Courts.³³

Therefore, to ensure there is adequate representation of women on the bench, the Author recommends that proper guidelines should be framed by the Collegium to ensure female more female judges are appointed to the High Courts and Supreme Courts.

A variety of perspectives in the Bar would also lead to a variety of perspectives at the Bench. This variety of perspectives is crucial for a holistic understanding of legal issues and for delivering gender-inclusive judgments, particularly on matters concerning gender equality.

D. Measures for Prevention of Sexual Harassment:

We have seen that women in the legal profession are also subjected to sexual harassment. Women practitioners are reported to be harassed by Co-lawyers, Judges, Senior Members of the Bar as well as the Litigants within Court Premises as well as outside.

The Hon'ble Supreme Court of India in the case of *Vishaka & Ors v. State of Rajasthan & Ors*³⁴ held that each incident of sexual harassment of working women results in a violation of fundamental rights of 'Gender Equality' and the 'Right to Life and Liberty'. It is a clear violation of the rights under Articles 14, 15 and 21 of the Constitution. The Hon'ble Court further laid down guidelines relating to sexual harassment until suitable legislation was enacted by the Parliament. These guidelines are better known as the *Vishaka* guidelines.

Moreover, in the case of *Medha Kotwal Lele and Ors. V. Union of India and Ors.*³⁵ the Hon'ble Supreme Court had issued directions to Bar Councils and Bar Associations to strictly adhere to the *Vishaka* guidelines in cases of sexual harassment.

India has seen a law relating to Sexual Harassment of women at the workplace only in 2013 in the form of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and

³² Closed Brotherhood. (2009). *Economic and Political Weekly*, 44(12), 6–6.
<http://www.jstor.org/stable/40278796>

³³ Chandra, A., Hubbard, W., & Kalantry, S. (2018). From Executive Appointment to the Collegium System: The Impact on Diversity in the Indian Supreme Court. *Verfassung Und Recht in Übersee / Law and Politics in Africa, Asia and Latin America*, 51(3), 273–289. <https://www.jstor.org/stable/26630269>

³⁴ (1997) 6 SCC 241

³⁵ (2012) 9 S.C.R. 895

Redressal) Act, 2013.

In pursuance of the objectives of this Act, the Supreme Court framed The Gender Sensitisation and Sexual Harassment of Women at the Supreme Court of India (Prevention, Prohibition and Redressal) Regulations, 2013 and constituted the Gender Sensitisation and Internal Complaints Committee (GSICC). The primary objective of the GSICC was to provide a mechanism to redress the grievances of women who had been subjected to sexual harassment within the precincts of the Supreme Court of India.

The researcher suggests that such committees shall be constituted for all the High Courts and District Courts of the Country. This will ensure that women practitioners in High Courts and District Courts are equally protected and have an accessible grievance redressal mechanism if they are subjected to sexual harassment within the precincts of those courts.

V. Conclusion

Practical amendments to the law can create a more inclusive and supportive environment for women in the legal profession. One such step is the introduction of **gender-responsive infrastructure in court premises**, which can be achieved by amending sections 6 and 7 of the Advocates Act, of 1960. This includes providing clean and well-maintained sanitary facilities, child-friendly crèches, private restrooms for women lawyers during menstruation, and adequate facilities for online court appearances. Bar Councils and High Courts should be mandated to allocate a specific budget for maintaining this infrastructure to ensure its sustainability

Additionally, to address the underrepresentation of women in Bar Councils, Sections 3 and 4 of the Advocates Act, 1961 can be amended to require that at least 50% of council members, both at the state and national levels, be women. This would empower women to have a more significant role in shaping the legal profession. Bar Councils with women's representation, ensuring continuous progress in achieving gender balance.

The Collegium system also needs reform to enhance women's representation in the judiciary. New rules should require the consideration of gender diversity in judicial appointments, alongside transparency measures to bolster public trust. A monitoring committee could be established to track women's representation in the judiciary and recommend initiatives like

mentoring and training programs.

Historically, women in the legal profession have faced numerous challenges, many of which persist today. Despite significant progress in recent years, women remain underrepresented in leadership positions within the judiciary and Bar Councils. To address these disparities and foster a more inclusive legal environment, affirmative action and policy changes are essential.

In conclusion, implementing practical legal amendments and policy reforms is vital to ensure gender equality and a supportive environment for women in the legal profession. By guaranteeing equal representation and addressing the unique needs of women, we move closer to a just and inclusive legal system.

As Shakespeare so eloquently reminds us of women's strength and equality:

“And though she be but little, she is fierce.”— *A Midsummer Night's Dream*

Let us ensure that every woman's strength and voice are recognised and valued equally, both in the law and in society.